IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2479 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT ELECTRICITY BOARD (NOW MADHYA GUJARAT VIJ CO.LTD - Petitioner(s)
Versus
HIMATBHAI CHATURBHAI ZALA - Respondent(s)

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Appearance :
MS LILU K BHAYA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

1. In this petition, petitioner Gujarat Electricity Board now renamed as Madhya Gujarat Vij Co. ltd has challenged an order dated 6th September, 2005

passed by the Fourth Additional Senior Civil Judge, Nadiad in Special Civil Suit No.9/2003.

2. The petitioner is plaintiff in the said Civil suit. During the pendency of the suit, there has been bifurcation of Gujarat Electricity Board in different zones. In each zone, therefore, a new entity has come into existence, replacing the statutory Board for all purposes. Different Companies have been established in different zones of the State. The petitioner plaintiff therefore, filed an application seeking amendment of the cause title of the suit to bring on record the Madhya Gujarat Vij Co. ltd. as plaintiff in substitution of Gujarat Electricity Board. This application however, unfortunately came to be rejected by the impugned order. Only ground pressed for rejection of the request of the petitioner was that the affidavit in support of the application for amendment was sworn by the Deputy Engineer, Narmada Project Nigam Power, Kevadia colony. Learned Judge was of the opinion that it is not demonstrated as to how the deponent was authorised to file affidavit. It is unfortunate that a Statutory Board has to move this Court for task as simple as seeking a simple amendment in the cause title. The petitioner had produced enough evidence to suggest that the State Government has undertaken bifurcation of the Board in different units. The grant of amendment

was in no way prejudice to the defendant. It is difficult to understand how the trial Court found it inappropriate to grant such permission. Even if there was some doubt about the authority of the deponent to swear affidavit in support of the application, trial Court ought to have called upon the plaintiff for explanation of such person's description. To completely reject the application for amendment was totally unacceptable.

3. In the result, impugned order dated 6th September, 2005 is quashed. The amendment application seeking amendment in the cause title of the plaint is allowed.

4. The petition is allowed and disposed of accordingly. Rule is made absolute. No order as to costs.

(Akil Kureshi,J.)

(raghu)